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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,079	08/21/2003	Erik John Hasenoehrl	9343	6936
7590	06/20/2008			
James J. Napoli, Ph.D. Marshall, Gerstein & Borun LLP 233 South Wacker Drive 6300 Sears Tower Chicago, IL 60606-6357			EXAMINER AHMED, HASAN SYED	
			ART UNIT 1618	PAPER NUMBER
			MAIL DATE 06/20/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/645,079	HASENOEHRL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	HASAN S. AHMED	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 March 2008.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-25 is/are pending in the application.
- 4a) Of the above claim(s) 14-25 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

Receipt is acknowledged of Applicants': (a) application for change of correspondence address, filed on 17 January 2008, (b) petition for a one-month extension of time, filed on 20 March 2008, and (c) response to official action, also filed on 20 March 2008.

\* \* \* \* \*

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3-5, and 10-13 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, et. al. in view of Bries, et. al. (U.S. Patent No. 5,110,843).

Slavtcheff, et. al. disclose a layered effervescent article for cleansing body surfaces (see col. 2, lines 10-30).

The disclosed article is comprised of:

- the effervescent composition comprising solid alkaline and acidic materials of instant claim 1; and
- the liquid-permeable laminate comprising a first web (as defined in paragraph 0028 of the instant specification) layer and a second web layer

with said effervescent composition present between the first and second layers (see col. 2, line 67 – col. 3, lines 9, 32 and 46-56; figure 2).

The disclosed article may further comprise:

- an anionic lathering surfactant (instant claim 3), such as an isethionate, a taurate or a sulfate (instant claim 5). See col. 4, line 65 – col. 5, line 8.
- an effervescing composition comprising:
  - 1-80% of an alkaline material such as, *inter alia*, azides (instant claim 10) and sodium bicarbonate (instant claim 11) (see col. 4, lines 20-25); and
  - 1-80% of an acidic material such as, *inter alia*, toluene sulfonic acid (instant claim 12) and citric acid (instant claim 13) (see col. 4, lines 29-53).

Slavtcheff, *et. al.* explain that combining the disclosed agents into one cleansing article is beneficial because it forms a convenient delivery package (see col. 1, lines 14-20).

The Slavtcheff, *et. al.* reference differs from the instant claims in that it does not teach a surfactant layer distributed over the first web layer (see instant claim 2).

Bries, *et. al.* teach a cleaning article comprising multiple layers (see col. 5, lines 23-56).

The disclosed article may contain a layer comprising a cleaner or detergent (see col. 5, lines 49-52).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a surfactant to the top layer of a multi-layer personal cleansing article. One of ordinary skill in the art at the time the invention was made would have been motivated to add surfactant to the cleansing article because it forms a convenient delivery package, as explained by Slavtcheff, *et. al.*

\*

2. Claims 6, 7, and 9 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.*

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (see above).

The Slavtcheff, *et. al.* reference differs from the instant case in that it does not disclose the bonding agents of instant claim 7.

However, the reference teaches that the layers of the disclosed article are heat fused (instant claim 6) at the outer perimeter (instant claim 9). See col. 3, lines 48-49.

Thus, burden shifts to Applicants to show an unexpected result with use of the bonding agents recited in instant claim 7.

\*

3. Claim 8 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.* in view of Bries, *et. al.*

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (see above).

The Slavtcheff, *et. al.* reference differs from the instant case in that it does not teach the third layer to the second layer of instant claim 8.

Bries, *et. al.* teach a cleaning article comprising multiple layers (see col. 5, lines 23-40).

Bries, *et. al.* explain that multiple layers are beneficial for "...support, reinforcement, strength, abrasiveness, etc." See col. 5, lines 49-52.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a third layer to the second layer of the claimed article. One of ordinary skill in the art at the time the invention was made would have been motivated to add the third layer to the cleansing article for, e.g., support, reinforcement, strength, and abrasiveness, as explained by Slavtcheff, *et. al.*

\* \* \* \* \*

### ***Response to Arguments***

Applicant's arguments filed on 20 March 2008 have been fully considered but they are not persuasive.

Applicants argue that there is no motivation for one skilled in the art to modify the Slavtcheff and Bries references to create the article recited in amended instant claim 1 since Slavtcheff does not teach separation of the effervescent composition and the lathering surfactant, and Bries only teaches a detergent, not an effervescent composition.

Examiner respectfully disagrees. Instant claim 1 recites the open language "comprises." While the claim directs the certain compositions on certain layers, the

open construction of the claim precludes neither the effervescent composition, nor the lathering surfactant from any of the layers. As such, examiner respectfully submits that sufficient motivation exists to modify the Slavtcheff and Bries references to create the article recited in amended instant claim 1, as claimed.

\* \* \* \* \*

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. S. A./  
Examiner, Art Unit 1618

/Humera N. Sheikh/  
Primary Examiner, Art Unit 1618

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